

Marquette University
Purchase Order Terms and Conditions – Services (2021)

These Terms and Conditions will apply to all Purchase Orders for Services issued by Marquette University (“**Purchaser**” or “**University**”) to the services provider (“**Provider**”). A Purchase Order will consist of (1) these Terms and Conditions; (2) the Statement of Work agreed by the Purchaser and the Provider, in the form prescribed by Purchaser, that references a University Purchase Order by number; and (3) any separate terms and conditions required by Provider in connection with the Purchase Order that references a University Purchase Order by number and are accepted by Purchaser.

EFFECTIVE DATE OF PURCHASE ORDER

A Purchase Order will become effective when (1) Provider notifies Purchaser in writing of its acceptance of a Purchase Order; (2) both Provider and Purchaser sign the Statement of Work that references a Purchase Order by number; and (3) both Provider and Purchaser sign any separate terms and conditions required by Provider in connection with a Purchase Order.

CONFLICTS

Each term or condition of the Statement of Work agreed to by the Purchaser and the Provider, as well as each separate term or condition required by Provider in connection with a Purchase Order, will apply, but only to the extent that there is no conflict with the terms set forth in these Terms and Conditions; except that, if the Statement of Work or separate agreement between Provider and Purchaser contains the following language, the terms of the agreement containing the following language will apply: “Notwithstanding the terms and conditions of Purchase Order No. [enter PO number] of Marquette University, and subject to the written approval of the Marquette University Office of General Counsel, the following identified terms will prevail over any conflicting terms in Purchase Order No. [enter PO number] of Marquette University.”

CHANGES

Changes to a Purchase Order can only be made in writing.

NOT-TO-EXCEED AMOUNT

The amount set forth on a Purchase Order for Services is a not-to-exceed amount. Under no circumstances will the total amount to be paid by Purchaser exceed the amount set forth on a Purchase Order for Services to which these Terms and Conditions apply without the issuance of a new or revised Purchase Order for Services increasing the not-to-exceed amount.

PAYMENT AND EXTRA CHARGES

The amount due from Purchaser under a Purchase Order will be determined based on the Statement of Work agreed to by the Purchaser and the Provider that references a Purchase Order by number, subject to the not-to-exceed amount set forth on the Purchase Order. No additional charges of any kind will be allowed unless specifically set forth in the Statement of Work agreed by the Purchaser and the Provider.

COMPLIANCE WITH LAWS AND TAX EXEMPTION

Provider will comply with all applicable laws, rules and regulations relating to the services described herein. Purchaser is a Wisconsin not-for-profit, tax-exempt organization and is thus exempt from sales tax in Wisconsin under CES #0061. Purchaser may also be exempt from certain federal excise taxes. Seller will not charge Purchaser for those taxes from which Purchaser is exempt. Proof of exemption is available upon request.

SUBCONTRACTING AND ASSIGNMENT

Provider will not contract, subcontract or assign to a third party any part of a Purchase Order or any rights arising thereunder with written authorization from Purchaser.

INVOICE AND SHIPMENT

Invoices must be emailed to invoices@marquette.coupa.com or mailed to P.O. Box 1881, Milwaukee, WI 53201-1881, Attention: Comptroller’s Office.

Separate invoices must be issued in connection with each Purchase Order. All invoices not referencing a Purchase Order number or more than one Purchase Order number will be rejected. The total amount invoiced under any Purchase Order may not be greater than the amount stated on the Purchase Order. Provider's complete name and address for remittance must appear on each invoice. If a Purchase Order is not for a firm fixed amount due for specified services, a complete description of labor performed, time expended, and each element of the charge must be provided on the invoice. All payment terms are Net 45 days or Net 15 if supplier accepts Virtual Pay (virtual credit card payments).

INSURANCE

During the term of each Purchase Order in an amount over \$2,000, Provider will maintain the following insurance policies from insurers licensed to do business in the State of Wisconsin: (a) commercial general liability (CGL) insurance of not less than \$1,000,000/occurrence and \$2,000,000 aggregate; (b) worker compensation insurance in accordance with applicable state statutory limits; (c) automobile insurance in the amount of \$1,000,000 (including coverage for insured, uninsured, underinsured, owned and non-owned vehicles). Certificates of insurance will be provided upon request. Where liability insurance is required, Purchaser will have no duty to pay any invoice until proof of liability insurance with appropriate minimum limits is provided to Purchaser by Provider.

If Provider is an individual person or sole proprietorship and has no employees except for the individual performing the services, the preceding Insurance provision will not apply, but the following language will apply. Provider and Purchaser are independent contractors. Nothing in these Terms and Conditions will be understood or construed to create or imply any relationship between Purchaser and Provider in the nature of any joint venture, employer/employee, principal/agent, or partnership. Neither Purchaser nor Provider will have the authority to, nor will either attempt to, assume any obligation by or on behalf of the other. Provider will in no way become an employee of the Purchaser by performing services under a Purchase Order and is not eligible for worker compensation benefits

from Purchaser. Provider or Provider's worker compensation insurer will be responsible for health and medical bills for sickness and injury that may be suffered by Provider while working on or arising from activities covered by a Purchase Order. Provider will be responsible for obtaining adequate insurance coverage and protection to meet its obligations under a Purchase Order.

TERMINATION FOR CONVENIENCE OR CAUSE

Purchaser may terminate the Purchase Order or any part thereof for its sole *convenience*. Upon notice of termination, Seller will immediately stop all work and shipment of goods and cause its suppliers and subcontractors to cease their work against the Purchase Order. Seller will be paid a reasonable termination charge consisting of a pro rata percentage of the Purchase Order price reflecting the percentage of work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller will not be paid for work performed or costs incurred after the receipt of notice of termination, or for costs incurred by Seller's suppliers that Seller reasonably could have avoided.

Purchaser may terminate the Purchase Order or any part hereof for *cause* if Seller defaults, fails to comply with any terms and conditions of the Purchase Order, becomes insolvent, ceases operations, liquidates or files for bankruptcy protection. Late delivery of goods or performance of services that are defective or do not conform to the Purchase Order will, be causes allowing Purchaser to terminate the Purchase Order for cause. Purchaser will not be liable to Seller for any amount upon termination for cause; but Seller will be liable to Purchaser for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination.

FORCE MAJEURE

Neither party will be considered in default in the performance of its obligations under this Purchase Order and either party may cancel without penalty by notice to the other party without liability if

performance is prevented or delayed by Force Majeure. "Force Majeure" means any cause that is beyond the reasonable control of the party affected, including war, hostilities, terrorism, revolution, civil commotion, strike, lockout, epidemic, pandemic, accident, severe weather, fire, wind or flood or any act of God. A party becoming aware of any Force Majeure condition that may affect performance under this Purchase Order will promptly give the other party notice of the condition.

DISPUTES

In case of a dispute, the party will inform the other party in writing, and the parties will attempt to resolve the dispute within thirty days. If a lawsuit is filed, the unsuccessful party agrees to pay the prevailing party's costs and expenses associated with the lawsuit, including reasonable attorney's fees and costs. Purchaser and Seller hereby agree that any dispute arising out of the Purchase Order or the purchases contemplated hereunder will be resolved in the state or federal courts located in Milwaukee County, Wisconsin. Seller hereby submits to the jurisdiction of these courts and agrees not to challenge the jurisdiction or venue of these courts in the event of a dispute. Any action, suit or proceeding caused by any alleged breach of a Purchase Order by Purchaser must be commenced within one (1) year after the cause of action accrued.

SET-OFF

Purchaser will have the right to set-off any amount owing from the Provider to Purchaser against any amount owing from Purchaser to the Provider. At Purchaser's option, repayment in lieu of setoff may be requested.

REMEDIES

No remedy herein provided will be deemed exclusive of any other remedy allowed by law.

LIMITATIONS OF LIABILITY

Neither party will be entitled to recover any incidental, special, punitive, or consequential damages under any Purchase Order, under any legal theory of recovery, in any action related in any way to a Purchase Order. Purchaser's liability on any claim for loss, damage or expense arising out of or in connection with this Purchase

Order will not exceed the price of the goods or services that give rise to the claim.

INDEMNIFICATION

Provider will indemnify, defend, and hold Purchaser, its trustees, officers, employees, agents, and students harmless from all loss, cost, or expense of any kind arising out of or related to personal injury or property damage to the extent caused or alleged to have been caused by the negligence or willful misconduct of the Provider, its employees, or its agents; any alleged or actual intellectual property infringement in connection with the services; as well as any breach of applicable law by Provider.

Provider will indemnify and save Purchaser harmless against any and all liens and encumbrances (arising out of or in connection with the Purchase Order) and keep Purchaser's premises free from all liens and encumbrances.

Purchaser will indemnify, defend, and hold Provider, its directors, officers, and employees harmless from all loss, cost, or expense of any kind arising out of or related to personal injury or property damage to the extent caused or alleged to have been caused by the negligence or willful misconduct of the Purchaser, its employees, its agents, or its invitees.

PUBLICITY AND PRESS RELEASES

Purchaser will have advance notice of, and the right to approve, all publicity and press releases related to any Purchase Order.

AUDIT

Provider will keep accurate records of all services provided or invoiced under each Purchase Order. Purchaser will have the right, for three (3) years from the completion of all services or the payment of the final invoice, whichever is later, to obtain copies of all records and documentation related to each Purchase Order and to audit all such records at reasonable times upon reasonable advance notice for the purpose of confirming the performance of all obligations in accordance with the terms and conditions of each Purchase Order.

GOVERNING LAW AND INTEGRATION

The validity, interpretation and performance of this Purchase Order will be governed and construed in accordance with the laws of the State of Wisconsin.

The Purchase Order as defined in the “Purchase Order” provision above will constitute the complete agreement of the parties with respect to its subject matter and will supersede any and all previous commitments or understands, oral or written.

WEAPONS POLICY

Marquette University enforces a no weapons policy, which can be found at www.marquette.edu/weapons-policy. Pursuant to the Weapons Policy, Provider, Provider’s employees, subcontractors and subcontractor employees may not:

- Carry any weapons on University property except as expressly permitted by applicable State law.
- Openly carry any weapons on University property.
- Carry any weapons in any University building or leased space or at any University special event marked with signage specifying “WEAPONS ARE PROHIBITED IN THIS BUILDING.”
- Carry or store any weapon in a University owned or leased vehicle.
- Park any personally owned or contractor vehicle on University property that contains a weapon.
- Possess unloaded ammunition on University property.
- Imply possession of, threaten to use, display, brandish, use, or discharge a weapon on University property for any purpose or reason except lawful self-defense or lawful defense of others.
- Sell or serve alcohol on University property or at a University event not on University property to any person whom the contractor or contractor employee knows or has reason to know is carrying a concealed weapon.

- Fail to report timely to the Marquette University Police Department the presence on University property of any person whom the Provider or its employee has reason to believe is in possession of or carrying a weapon in violation of University policy, unless doing so would subject the Provider or its employee to the threat of physical harm, or take other action in response to the presence of any person whom the Provider or its employee has reason to believe is in possession of or carrying a weapon in violation of University policy except for reporting the presence of the weapon to the Marquette University Police Department.

The University considers this provision to be a material term of the agreement. Provider is responsible for educating its employees on the requirements of this provision. Provider will immediately and permanently exclude from University property any of its personnel or its subcontractor’s personnel who are in violation of this provision. Provider acknowledges that there is no adequate cure for even a single breach of this provision and hereby waives any right to notice or to cure for violations of this provision in advance of University's termination of this agreement for default for violation of this provision.

NON-DISCRIMINATION AND EQUAL OPPORTUNITY

All services provided under any Purchase Order will be provided without regard to the race, color, creed, sex, age, disability status, or national origin of participants providing the services. Notices will be posted by Provider in compliance with applicable state and federal laws in conspicuous places, available for employees and applicants for employment of Provider, setting forth the provisions of this nondiscrimination clause, as required by law.

Marquette University believes it is important to support the establishment, preservation and strengthening of emerging businesses, defined as businesses owned by women or minorities. We seek opportunities to involve emerging businesses in the University’s purchasing process, and we also encourage our contractors and vendors to provide for their participation

through meaningful partnerships, joint ventures, subcontracts and other contractual opportunities.

Marquette University is an equal opportunity employer and will not engage in discriminatory practices on the basis of age, race, sexual orientation, color, sex, religion, national origin, veteran status, or disability in the performance of this Purchase Order. By accepting this Purchase Order, Seller warrants that it is also an equal opportunity employer, that does not engage in discriminatory practices as described above.

SEVERABILITY

If any part of a Purchase Order is found to be illegal or unenforceable, that part will be severed from the Purchase Order, and the rest of the Purchase Order will be enforceable as written.